

Board of Alternative Health Care

FY 2009

**2 unlicensed complaints**

2 cease and desist

1 – Practicing as midwife

1 – Advertising with naturopath designation

FY 2010

**2 unlicensed complaints**

1 cease and desist, 1 dismissed without prejudice

1 – Practicing naturopath

1 – Practicing holistic health care

EXHIBIT 1

DATE 1/27/2011

HB 73

Board of Chiropractors

FY 2009

**0 unlicensed complaints**

FY 2010

**0 unlicensed complaints**

Board of Clinical Laboratory Science Practitioners

FY 2009

**0 unlicensed complaints**

FY 2010

**4 unlicensed complaints**

4 cease and desist

3 – Advertising as clinical laboratory science practitioner

1 – Practicing as clinical laboratory science practitioner

Board of Dentistry

FY 2009

**5 unlicensed complaints**

5 cease and desist

5 – Practicing dentistry (advertising teeth whitening)

FY 2010

**7 unlicensed complaints**

5 cease and desist, 2 pending

5 – Practicing dentistry (advertising teeth whitening)

1 – Practicing as denturist

1 – Practicing as dental hygienist

Board of Funeral Service

FY 2009

**1 unlicensed complaint**

1 cease and desist

1 – Operating a cemetery without a license

FY 2010

**2 unlicensed complaints**

1 dismissed without prejudice, 1 dismissed with prejudice

1 – Operating a cemetery without a license

1 – Miscellaneous (Care of memorial park)

Board of Hearing Aid Dispensers

FY 2009

**1 unlicensed complaint**

1 dismissed without prejudice

1 – Practicing as a hearing aid dispenser

FY 2010

**1 unlicensed complaint**

1 dismissed with prejudice

1 – Miscellaneous (Price of hearing aids)

Board of Medical Examiners

FY 2009

**6 unlicensed complaints**

**3** cease and desist, **2** dismissed without prejudice, **1** dismissed with prejudice

1 – Practicing as nutritionist

1 – Practicing Dermatology

2 – Use of MD in title

1 – Use of "medical" in advertising

1 – Practicing as a physician

FY 2010

**13 unlicensed complaints**

**1** injunction, **7** cease and desist, **3** dismissed without prejudice, **1** dismissed with prejudice, **1** pending

1 – Practicing telemedicine

1 – Practicing as EMT

6 – Practicing as a physician

1 – Practicing as nutritionist

1 – Use of MD in title

2 – Practicing Dermatology

1 – Miscellaneous (Charting error by non licensed person)

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Board of Nursing Home Administrators

FY 2009

**1 unlicensed complaint**

**1** dismissed with prejudice

1 – Practicing as nursing home administrator

FY 2010

**0 unlicensed complaints**

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Board of Nursing

FY 2009

**9 unlicensed complaints**

**4** cease and desist, **5** dismissed with prejudice

6 – Practicing as a nurse

1 – Use of RN in title

1 – Use of LPN in title

1 – Working on expired temporary permit

F Y 2010

**2 unlicensed complaints**

**1** dismissed without prejudice, **1** dismissed with prejudice

2 – Practicing as a nurse

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Board of Optometry

FY 2009

**1 unlicensed complaint**

**1** dismissed without prejudice

1 – Practicing as an optometrist

FY 2010

**1 unlicensed complaint**

**1** dismissed without prejudice

1 – Practicing as an optometrist

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Board of Private Alternative Adolescent Residential Programs

FY 2009

**0 unlicensed complaints**

FY 2010

**2 unlicensed complaints**

**2** dismissed with prejudice

2 – Facility unlicensed

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Board of Pharmacy

FY 2009

**1 unlicensed complaint**

**1** cease and desist

1 – Working in MT without proper license

Board of Architects and Landscape Architects

FY 2009

**8 unlicensed complaints**

5 cease and desist, 3 dismissed without prejudice

5 – Practicing as architect

3 – Advertising as architect

FY 2010

**31 unlicensed complaints**

4 cease and desist, 14 dismissed without prejudice, 10 dismissed with prejudice, 3 pending

18 – Practicing as an architect

1 – Advertising as architect

12 – Practicing as landscape architect

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Board of Barbers and Cosmetologists

FY 2009

**13 unlicensed complaints**

4 cease and desist, 9 dismissed without prejudice

5 – Practicing as a cosmetologist/esthetician

4 – Practicing as an esthetician

2 – Operating a salon

2 – Practicing as a manicurist

FY 2010

**3 unlicensed complaints**

1 cease and desist, 1 dismissed without prejudice, 1 pending

2 – Practicing as a cosmetologist

1 – Practicing as an esthetician

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State Electrical Board

FY 2009

**18 unlicensed complaints**

15 cease and desist, 1 dismissed without prejudice, 2 dismissed with prejudice

15 – Practicing as an electrician

2 – Advertising as an electrician

1 – Miscellaneous (falsifying hours)

FY 2010

**37 unlicensed complaints**

23 cease and desist, 8 dismissed without prejudice, 3 dismissed with prejudice, 3 pending

27 – Practicing as an electrician

9 – Advertising as an electrician

1 – Miscellaneous (first cite & fine)

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Board of Outfitters

FY 2009

**0 unlicensed complaints**

FY 2010

**0 unlicensed complaints**

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Board of Public Accountants

FY 2009

**5 unlicensed complaints**

1 cease and desist, 3 dismissed without prejudice, 1 dismissed with prejudice

4 – Practicing as a certified public accountant

1 – Advertising as a certified public accountant

FY 2010

**6 unlicensed complaints**

5 cease and desist, 1 dismissed without prejudice

3 – Practicing as a certified public accountant

3 – Advertising as a certified public accountant

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Board of Professional Engineers & Land Surveyors

FY 2009

**6 unlicensed complaints**

4 cease and desist, 1 dismissed without prejudice, 1 pending

3 – Practicing as an engineer/surveyor

1 – Advertising as an engineer/surveyor

2 – Practicing as a surveyor

FY 2010

**10 unlicensed complaints**

3 cease and desist, 4 dismissed without prejudice, 3 dismissed with prejudice

6 – Practicing as an engineer/surveyor

4 – Practicing as an engineer

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Board of Plumbers

FY 2009

**30 unlicensed complaints**

28 cease and desist, 2 dismissed with prejudice

17 – Practicing as a plumber

13 – Advertising as a plumber

FY 2010

**57 unlicensed complaints**

38 cease and desist, 4 dismissed without prejudice, 3 dismissed with prejudice, 12 pending

46 – Practicing as a plumber

10 – Advertising as a plumber

1 – Miscellaneous (first cite & fine)

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Board of Private Security

FY 2009

**1 unlicensed complaint**

1 dismissed with prejudice

1 – Practicing as a security guard

FY 2010

**9 unlicensed complaints**

2 cease and desist, 2 dismissed without prejudice, 5 pending

3 – Practicing as a private investigator

1 – Practicing as a process server

1 – Practicing as an electronic security company

4 – Practicing as security alarm installer

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Board of Realty Regulation

FY 2009

**6 unlicensed complaints**

3 cease and desist, 3 dismissed with prejudice

1 – Practicing as a broker

5 – Practicing as a property manager

FY 2010

**9 unlicensed complaints**

4 cease and desist, 3 dismissed without prejudice, 1 dismissed with prejudice, 1 pending

1 – Practicing as a broker

1 – Practicing as a broker/salesperson

6 – Practicing as a property manager

1 – Practicing as a salesperson

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## Kane, Jack

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**From:** Johnson, Lisa (DLI)  
**Sent:** Monday, January 10, 2011 12:50 PM  
**To:** Kane, Jack  
**Subject:** Emailing: Unlicensed%20practice%20info%20cost%20estimates%20per%20average%20case%20for%20proposed%20cost%20recovery%20legislation.htm

**Scroll down to the bottom for the costs associated with each – dismissed, C&D and Injunction**

**From:** Worsech, Jeannie  
**Sent:** Thursday, August 19, 2010 6:09 PM  
**To:** Moe, Darcee  
**Cc:** Carter, Becky; White, Stephen; Johnson, Lisa (DLI); Kane, Jack  
**Subject:** Unlicensed practice info/cost estimates per average case for proposed cost recovery legislation

**Importance:** High

Darcee,

I needed to break down the complaints that are dismissed from the C & D's and the injunctions, which Becky kindly provided to me. This was necessary since there a different average cost for cases with different outcomes, example: dismissed, C & D issued and injunctions.

We estimated the costs based on an average and typical cases. Some cases may be a bit less, while others will be much higher. This obviously depends on the nature investigation and case. Costs include salaries, benefits and operating based on the type of staff member and travel expenses. For example compliance, investigator and program manager staff are all the same rate at \$50 per hour and the attorney staff rate is \$95 per hour.

Average case was calculated at 1.5 hours for compliance staff processing the complaint from receiving to conclusion. The investigator's processing time is estimated at 16 hours for investigation and report writing. The attorney's time is estimated to be a total of 2 hours per complaint including overseeing the investigation process and reviewing the report, and presenting to the board. Program manager processing time is 1 hour. The investigators travel is estimated at \$200 per case for personal interviews, going to location of unlicensed practice, etc. If the complaint was issued a C&D, we added \$100 for additional attorney time of 1 hour including supplies and mailing costs. If the complaint went to District court for an injunction we added 16 hours of attorney time for preparing the case, travel time to the jurisdiction and the trial. We also added the attorney's travel expenses of \$200 and process server fees of \$100 for notice.

Based on these assumptions above the following is the average cost per case:

The cost of a unlicensed practice complaint filed, investigated, presented to the Board then dismissed on average is approximately **\$1,300** each.

The cost of an unlicensed practice complaint same as above but a Cease and Desist is issued on average is approximately **\$1,400** each.

The cost of an unlicensed practice which ends in an injunction on average is estimated at **\$3500** each.

Therefore, based on the FY2009 and FY2010 complaint numbers broken down the following is provided.

Plumbing for 2009 = \$44,000 (Dismiss- 2, C& D – 27, Injunction – 1) Total 30

Plumbing for 2010 = \$27,000 (Dismiss- 3, C& D – 14, Injunction – 1) Total 18  
Electrical for 2009 = \$80,000 (Dismiss- 5, C& D – 50, Injunction – 1) Total 56  
Electrical for 2010 = \$54,300 (Dismiss- 10, C& D – 27, Injunction – 1) Total 38

Please let me know if you need anything else. I hope this is what you needed.

Thanks Jeannie

# PROFESSIONAL AND OCCUPATIONAL LICENSING UNLICENSED PRACTICE COMPLAINT STATISTICS

Category/Fiscal Year	ARC/LAR	AHC	BO	CHI	CLS	COS/BAR	DEN	ELE	FNR	HAD	MED	NHA	NUR	OPT	OUT	PAC	PAP	PEL	PHA	PLU	PSP	PSY	PTP	RCP	REA	RRE	RTS	SIP	SWP	VET	TOTAL			
FY06 # Unlicensed Practice Complaints	1		1			1	5	34			3	1			3	5	3	3	32	7	5	1				3				3	1	109		
FY07 # Unlicensed Practice Complaints	3	2	3	1		1	2	30	2		6			2	1	5	6	2	26	3	2				2	4		1	1	4	109			
FY08 # Unlicensed Practice Complaints	4	4		1		20		34			14		5		3	3	6	4	27	3			1			9				1	4	136		
FY09 # Unlicensed Practice Complaints	8	2				13	5	18	1	1	6	1	9	1	1	5	4	1	32	1			1	1	1	6					1	2	119	
FY10 # Unlicensed Practice Complaints	31	2			4	3	7	34	2	1	15	2	2	1	1	6	2	10	11	54	9		2		3	9	1					210		
FY06 # Cease & Desist/Injunctions				1				28			2				2	3	1	1	22	1	4					1						1	66	
FY07 # Cease & Desist/Injunctions		2				1	1	22	1		5					3	6	1	18	2					1		2					4	66	
FY08 # Cease & Desist/Injunctions		2				17		32			7		1		1	1	3	3	24	1											1	95	24	
FY09 # Cease & Desist/Injunctions	5	2				4	5	15	1		4		4			1	4		30						1							79	1	3
FY10 # Cease & Desist/Injunctions	4	1			4	2	4	23			8				5	5	3	6	47	2						4							113	
FY06 # UP Complaints Dismissed		1				1	5	6			1	1			1	2	2	2	10	6	1	1				2					3	43		
FY07 # UP Complaints Dismissed				1				6			2				2	1	2		8	1	2				1	4					1	35	3	
FY08 # UP Complaints Dismissed	3	2	3	1		3		2			7		4		2	2		2	3	2			1			7						1	42	4
FY09 # UP Complaints Dismissed	3					9		3	1	1	2	1	5	1	4	4	2	1	2	1					1		3					1	43	3
FY10 # UP Complaints Dismissed	24	1				1		11	2	1	5	2	2	1	1	1	2	7	5	6	7		2		3	4	1						87	10
# UP Complaints Pending	3						3	1			1							1															1	1
# Referred to County Attorney											1																							1

## Board Acronyms

ARC/LAR	Architects / Landscape Architects	PAC	Public Accountants
AHC	Alternative Health Care	PAP	Private Alternative Adolescent Residential or Outdoor Programs
BO	Boiler Operators	PEL	Engineers & Land Surveyors
CHI	Chiropractors	PHA	Pharmacy
CLS	Clinical Laboratory Science Practitioners	PLU	Plumbers
COS/BAR	Cosmetologists/Barbers	PSP	Private Security Patrol Officers & Investigators
DEN	Dentistry	PSY	Psychologists
ELE	Electrical	PTP	Physical Therapy Examiners
FNR	Funeral Service	RCP	Respiratory Care Practitioners
HAD	Hearing Aid Dispensers	REA	Real Estate Appraisers
MED	Medical Examiners	RRE	Realtor Regulations
NHA	Nursing Home Administrators	RTS	Radioactive Technicians
NUR	Nursing	SIP	Speech Language Pathologists & Audiologists
OPT	Optometry	SWP	Social Workers and Professional Counselors
OUT	Outfitters & Guides	VET	Veterinarians

Jennifer Porter, RDH  
President, Montana Board of Dentistry  
400 Buckhorn Trail  
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(406) 586-1536

January 10, 2011

Committee Members,

I am writing on behalf of the Montana Board of Dentistry in support of HB 73. This bill will enable our board to protect the public from unlicensed practice. In the past few years we have run into many cases of unlicensed practice that we have not been able to stop. We have issued cease and desist orders only to have the unlicensed individual continue the unlicensed practice. Injunctions are not pursued due to expense, and if pursued the only result is an order that the person must stop doing the practice that the law already prohibits. If the unlicensed practice continues, the board must go back to court and prove unlicensed practice in violation of the injunction. Criminal prosecutions almost never occur because county attorneys are busy and view unlicensed practice as the responsibility of the boards.

Our board is charged with protecting the public. To do so we need a means for an administrative action to be taken against unlicensed persons. The action will be initiated and heard in the same manner and will afford the same due process as licensees have.

HB 73 would make it possible for those who violate licensing laws to be subject to an order to cease and desist, a civil penalty, and costs and attorney fees, depending on the extent of the unlicensed practice. It also provides that violations of an order to cease and desist may result in higher penalties and more fees and costs. This would be a deterrent for individuals.

This bill would also allow boards to receive all but one-half of penalties, and boards may enforce and execute upon an administrative order in the same manner that a person may enforce and execute upon a judgment awarded by a Montana district court.

Our board feels that the passage of this bill is critical in allowing us to protect the public from unlicensed individuals.

Thank you for your time and consideration,

Jennifer Porter, RDH  
President, Montana Board of Dentistry